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HOSPITALITY HOUSE; COALITION ON
HOMELESSNESS; AND FAITHFUL FOOLS

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ATTORNEYS FOR PROPOSED
INTERVENORS COALITION ON
HOMELESSNESS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HASTINGS COLLEGE OF THE LAW, a public trust
and institution of higher education duly organized
under the laws and the Constitution of the State of
California; FALLON VICTORIA, an individual;
RENE DENIS, an individual; TENDERLOIN
MERCHANTS AND PROPERTY ASSOCIATION, a
business association; RANDY HUGHES, an
individual; and KRISTEN VILLALOBOS, an
individual,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, a
municipal entity,

Defendant.

Case No. 4:20-cv-3033-JST

**PROPOSED INTERVENORS'
SUPPLEMENTAL BRIEF IN
SUPPORT OF THE MOTION
FOR INTERVENTION**

Date:

Time:

Place: Courtroom 6, Second Floor
Judge: Hon. Jon S. Tigar

Complaint Filed: May 4, 2020

Trial Date: None Set

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I. INTRODUCTION

Proposed Intervenor Hospitality House, Coalition on Homelessness, and Faithful Fools hereby file this supplemental brief in support of their Motion for Intervention, pursuant to this Court's June 16 Order. ECF No. 55. Proposed Intervenor also file this brief to provide notice to the Court of their opposition to the proposed Stipulated Injunction as it is currently written, filed with the Court on June 12, 2020. ECF No. 51 ("Stipulated Injunction").

The parties' settlement agreement in its current form raises serious questions about the City's plans to remove unhoused person and their property from the Tenderloin's public spaces. The proposed Stipulated Injunction demonstrates not only the propriety of but also the need for Proposed Intervenor's intervention in this lawsuit so that the Intervenor can add their expertise and years of experience to the Stipulated Injunction and any negotiated settlement.

On its face, the Stipulated Injunction's primary goal is to reduce the number of tents in the Tenderloin by declaring quotas—a 70% reduction by July 20, 2020, with an end goal of zero tents in the Tenderloin. Proposed Intervenor are particularly concerned about the Stipulated Injunction's lack of adequate safeguards to protect the civil and constitutional rights of the people who are to be relocated in pursuit of the Stipulated Injunction's zero-tents goal—in particular the lack of plans or procedures for addressing the needs of unhoused persons with disabilities in placing individuals in temporary shelter and the agreement's commitment to using criminal enforcement to achieve its goals. Proposed Intervenor continue to meet the standard for intervention, in that their Motion is timely; the lawsuit and Stipulated Injunction directly implicate unsheltered people's rights and interests; the Stipulated Injunction will greatly impair unsheltered individuals' ability to protect their interests; and the existing parties do not adequately represent the interests of unsheltered Tenderloin residents, as demonstrated by the current proposed Stipulated Injunction.

II. ARGUMENT

A. The Motion for Intervention Remains Timely

The fact that existing parties have reached an agreement prior to intervention is not dispositive of whether intervention is timely. *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659

(9th Cir. 1978) (describing how intervention can be granted even after the entry of consent decree in exceptional cases); *Pellegrino v. Nesbit*, 203 F.2d 463, 465 (9th Cir. 1953) (“Intervention should be allowed even after a final judgment where it is necessary to preserve some right which cannot otherwise be protected.”). Intervention has been found timely and granted even after existing parties have reached an agreement. *See e.g. Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (holding district court abused its discretion by finding intervention was untimely when proposed intervenors filed to intervene after existing parties reached a settlement agreement and intervention was sought more than 70 days after intervenors learned that their interests were not being represented).

For example, in *U.S. v. City of Los Angeles*, 288 F.3d 391, the Ninth Circuit examined two appeals of denials of intervention in the same case—one by a police league and another by community groups. Both intervention motions were filed after the existing parties filed a consent decree, but the agreement was not yet entered or approved by the court. *U.S. v. City of Los Angeles*, 288 F.3d 391, 396-97 (9th Cir. 2002). In the case of the police league, the Court reversed the district court’s denial of intervention as a matter of right even though intervention was sought after existing parties engaged in “difficult and complex negotiations” before filing the consent decree. *Id.* at 404. The Court also reversed the lower court’s holding that permissive intervention is prohibited as a matter of law in cases involving enforcement of a proposed government consent decree, and it remanded the community intervenors’ permissive intervention motion to be analyzed under the Rule 24(b) factors. *Id.* *City of Los Angeles* demonstrates that intervention under Rule 24(a) and Rule 24(b) can still be timely, even in light of a proposed stipulated agreement by existing parties.

In weighing timeliness, this Court must look at the totality of the circumstances facing proposed intervenors, focusing on three factors (1) the stage of proceeding; (2) prejudice to existing parties; and (3) reason for and length of delay. *Smith, supra* at 854 (9th Cir. 2016). Consideration of each of these factors supports Proposed Intervenors’ intervention.

As discussed above, the existence of a settlement does not, by itself, make intervention untimely. And, unlike cases that have found post-settlement intervention attempts to be

untimely, Proposed Intervenor have not delayed in seeking intervention; Proposed Intervenor intervened as quickly as possible to ensure that their and unhoused Tenderloin residents' interests were represented in the case. *See e.g. County of Orange v. Air California*, 799 F.2d 535, 538 (9th Cir. 1986) (holding lower court did not abuse its discretion by finding intervention was untimely when filed after existing parties had been in protracted litigation for five years with publicized negotiations); *Alaniz, supra* at 659 (affirming denial of intervention where intervenors moved to intervene two and a half years after suit commenced, where intervenors received notice of class action, and where "extensive, well-publicized" negotiations" had occurred prior to the consent decree); *U.S. v. Blue Chip Stamp Co.*, 272 F. Supp. 432, 435-38 (C.D.Cal.1967), *aff'd*, 389 U.S. 580, 88 S. Ct. 693, 19 L. Ed. 2d 781 (1968) (denying intervention as untimely when filed after consent decree was entered, when negotiations had been ongoing for two years, where existing parties "afforded an opportunity to all defendants and to all other parties expressing an interest in the case to be heard" in the negotiation process, and where intervenors had initially filed as *amici curiae* opposing proposed consent decree rather than filing motion to intervene).

Here, in contrast, Proposed Intervenor promptly moved to intervene. They filed for intervention just over one month after the case commenced, before Defendants appeared in the case, and before the parties reached an agreement. Proposed Intervenor did not wait months or years, or to see whether a negotiated outcome would be averse to their interests. Rather, the existing parties reached a negotiated settlement at a highly expedited pace. That settlement was entered only after Proposed Intervenor filed their motion, but without their input.

The existing parties in the litigation will not be prejudiced by Proposed Intervenor's entry into the litigation, and the necessity of Proposed Intervenor's interests being represented and heard outweighs any potential prejudice. Existing parties to a litigation may argue that they will be prejudiced if intervention is granted because intervention might upset the delicate balance of negotiations. *See e.g. Smith, supra* at 858. However, the Ninth Circuit has already made clear that such arguments must fail when intervention is sought at an early stage of a case. *See e.g. id.*; *U.S. v. City of L.A.*, 288 F.3d 391, 404 (9th Cir. 2002). Even if allowing Proposed Intervenor

1 “to participate in . . . negotiation and implementation would make achieving resolution more
 2 difficult, given the parties' competing interests . . . this would be true regardless of when the
 3 intervention occurred, it is unrelated to timeliness, and cannot support a finding of prejudice.”
 4 *Smith, supra* at 858.

5 Here, Proposed Intervenors do not seek to make achieving a resolution more difficult.
 6 They believe the Stipulated Injunction can be amended and strengthened to protect the rights of
 7 unhoused people to achieve the mutual goal of “improving living conditions in the Tenderloin
 8 neighborhood, and of making the streets and sidewalks clear and safe for the use of persons in
 9 the Tenderloin, including residents, the unhoused, visitors, employees, employers, shoppers, and
 10 persons with disabilities” while ensuring that implementation of the settlement does not result in
 11 the unconstitutional violations of unhoused persons’ rights. Stipulated Injunction at 1:22-25.
 12 Wilson Decl., ¶¶11-12; Friedenbach Decl., ¶¶3, 6-10, 14; Dennison Decl., ¶¶4, 11-13; Evans
 13 Decl. ¶29.

14 Finally, the Ninth Circuit has stated that, even when a consent decree has been already
 15 entered, which is not the case here, there are exceptional cases where a court may still grant
 16 intervention. *See Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978). Such
 17 exceptional circumstances exist here, where the people most affected by the proposed Stipulated
 18 Injunction are represented by Proposed Intervenors but not by the existing parties to the case.
 19 According to the proposed Stipulated Injunction, the City will reduce the presence of unhoused
 20 Tenderloin residents’ tents and other property by 70% by July 20, 2020 and will use “all
 21 reasonable efforts” to get the number of tents and personal property of unhoused persons to zero
 22 after July 20, 2020. Stipulated Judgment at 7:18-25. Yet, while the Stipulated Injunction
 23 mentions some existing and potential shelter resources, including temporary hotel stays and
 24 short-term outdoor sites, it does not include the following important information to ensure that
 25 unhoused persons rights will be protected. The agreement as it is currently written lacks
 26 standards or process: for ensuring shelter placements are safe, appropriate, and adequate; for
 27 providing reasonable accommodations to people with disabilities; for protecting against the
 28 seizure or destruction of unhoused people’s tents and other personal property; or for

1 guaranteeing that the planned “enforcement measures” do not result in the unconstitutional
 2 criminalization of homelessness. Stipulated Injunction at 2-3; see also *Martin v. City of Boise*,
 3 920 F.3d 584, 617 (9th Cir. 2019) (holding that “as long as there is no option of sleeping indoors,
 4 the government cannot criminalize indigent, homeless people for sleeping outdoors, on public
 5 property, on the false premise they had a choice in the matter.”).

6 **B. Unsheltered People Continue to Have a Protectable Interest in the Outcome of This**
 7 **Litigation**

8 Proposed Intervenors continue to have protectable legal rights even though the parties
 9 have entered into a Stipulated Injunction, and the Stipulated Injunction’s own terms reinforce the
 10 necessity of protecting those rights. *See* MPAs ISO Intervention at 16:10-18:8. The Stipulated
 11 Injunction’s stated goal is to rapidly remove all unhoused persons from the Tenderloin District’s
 12 public spaces, but the Stipulated Injunction does not include adequate plans, procedures, or
 13 protections for unhoused residents, especially those with disabilities. The City commits to
 14 reducing tents and unhoused residents’ personal belongings in the Tenderloin by 70% by July 20,
 15 2020, with a “shared goal” of achieving zero tents in the Tenderloin. Stipulated Injunction at
 16 7:18-25. The proposed Stipulated Injunction states that the City “will employ enforcement
 17 measures for those who do not accept an offer of shelter or safe sleeping site to prevent re-
 18 encampment.” Stipulated Injunction at 7:14-17. The City’s commitment to employ enforcement
 19 measures for those who do not accept a shelter offer, without any explicit language that the
 20 shelter offered must be actually available, appropriate for a people’s individual needs, and
 21 accessible to people with disabilities, is harmful to unhoused persons’ interests, particularly those
 22 with disabilities.

23 Although the proposed Stipulated Injunction does contain blanket language that the
 24 parties “shall respect” the rights of unhoused people, it fails to enumerate what those rights are,
 25 and it does not contain the specificity required to ensure those rights are protected. *See*
 26 Stipulated Injunction at 7:26-27. The agreement does not identify the number of hotel rooms or
 27 safe sleeping site placements that exist now, how many will be created, or what the duration of
 28 those placements will be. It identifies only 50 to 70 spots for tents in the Tenderloin, without a

1 concrete plan to identify additional housing and shelter options, the process of making placement
 2 is accessible to people with disabilities. The City has never had sufficient shelter or affordable
 3 housing stock to meet the community's needs, and there are 1,990 unsheltered residents of
 4 District 6. Intervenor's Compl. at ¶¶77-79, 91, 98, 102, 171, 179; Friedenbach Decl., ¶4.

5 Further, the proposed Stipulated Injunction contains numerous references to reducing the
 6 number of tents and property, yet no provision for treating unhoused individuals' personal
 7 belongings in accordance with the requirements of law, nor for ensuring that unhoused
 8 individuals are not required to abandon their personal property in order to accept a shelter
 9 placement. It does not require the City to ensure that unhoused residents who are displaced from
 10 the Tenderloin maintain access to critical services, such as mental health treatment. In other
 11 words, the agreement contemplates criminal enforcement without clear plans to identify
 12 appropriate shelter or reasonable accommodations for unhoused persons with disabilities. See
 13 Evans Decl., ¶¶9-12; 14; 21-27. The proposed Stipulated Injunction only seeks to advance
 14 Plaintiffs' interests of eliminating tents in the Tenderloin without adequate provisions to protect
 15 the rights and property of the people who are living in those tents.

16 Finally, the Stipulated Injunction, as proposed by Plaintiffs, does not provide Proposed
 17 Intervenor or unhoused individuals with the ability to enforce their rights with respect to this
 18 agreement, thus making intervention even more urgent under these circumstances. While there is
 19 always an option to file a new lawsuit if the City violates unhoused persons constitutional or
 20 statutory rights, the Proposed Intervenor want to avoid litigation by improving the current
 21 proposed Stipulated Injunction, rather than start a new lawsuit. The rights of unhoused persons
 22 are directly implicated but not protected by the proposed Stipulated Injunction as it is currently
 23 written. Proposed Intervenor's urge the Court to grant Intervenor's Motion for Intervention so
 24 that they can participate in the negotiation process and improve the current proposed Stipulated
 25 Injunction to ensure all people directly affected by the proposed agreement are protected.

26 **C. The Stipulated Injunction Impairs Unsheltered Individuals' Ability to Protect Their**
 27 **Interests, and the Parties Do Not Adequately Represent These Interests.**
 28

1 **1. The Stipulated Injunction will likely result in citations and arrests of**
 2 **homeless people.**

3 The proposed Stipulated Injunction commits to using police enforcement against
 4 homeless people, including those with disabilities and a population of disproportionately Black
 5 Tenderloin residents, despite an acknowledged lack of available, adequate shelter. For
 6 agreement’s current language reads, the City “will increase its enforcement efforts,” if people do
 7 not move their tents on the Stipulated Injunction’s timeline. Stipulated Injunction at 8:13-16.
 8 These enforcement measures are not new to the City of San Francisco, the City has a history of
 9 criminalizing homelessness. *See* Intervenors’ Complaint (Intervenors’ Compl.) at ¶¶92-102.

10 Homeless people have a constitutional right to be free from criminalization if they are
 11 sleeping outside where there is no alternative and adequate shelter. *Martin, supra*, 920 F.3d 584.
 12 The proposed Stipulated Judgment does not make clear that the City cannot cite, arrest, or take
 13 other enforcement action against someone if there is no appropriate and available shelter. As the
 14 Stipulated Injunction clock winds down, the City will likely face increased pressure to reduce the
 15 number of tents and people, and it will respond by engaging in sweeps, issuing citations,
 16 arresting people, and instructing people to move along, out of the Tenderloin, under the threat of
 17 issuing criminal citations or arrests if people fail to do so. *See* Wilson Decl., ¶¶6, 10-11;
 18 Friedenbach Decl., ¶¶5, 8-13; Evans Decl., ¶¶7, 9-10, 19; *See* Dennison Decl., ¶5.

19 Further, the proposed Stipulated Injunction encourages the unlawful seizure and
 20 destruction of people’s property because the parties commit to reducing the number of tents,
 21 along with all other encamping materials and related personal property, in the Tenderloin to zero,
 22 without any language describing how the City will reach this number. Stipulated Injunction at
 23 7:22-25. The Ninth Circuit has made clear that the Fourth and Fourteenth Amendments to the
 24 United States Constitution prohibit unreasonable seizure of private property, and that these
 25 protections apply to homeless people’s private property, even when that property is located in or
 26 on a public space. *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012); *See also*
 27 *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), vacated due to settlement, 505 F.3d
 28 1006 (9th Cir. 2007); *Justin v. City of Los Angeles*, No. 00-CV-12352, 2000 WL 1808426, at *13

(C.D. Cal. Dec. 5, 2000) (granting a temporary restraining order barring the City from, among other things, “[c]onfiscating the personal property of the homeless when it has not been abandoned and destroying it without notice”).

The City has a history of unlawfully seizing and destroying unhoused persons’ property, and the proposed Stipulated Injunction in its current form incentivizes the City to engage in more such seizure and destruction. *See* Intervenor’s Compl., ¶¶92-102. If property is not moved on the Stipulated Injunction’s hurried timeline, the City “will increase its enforcement efforts.” Injunction at 4:13-16. Although the proposed Stipulated Injunction does not specify what enforcement efforts it will employ, such efforts in the past have included taking property in violation of the Fourth and Fourteenth Amendments, failing to properly store property that was taken in the manner required by law and the City’s own policies, and illegally destroying homeless people’s property. *See* Intervenor’s Compl., ¶¶92-102; Evans Decl., ¶7.

Since the parties filed their proposed Stipulated Injunction, the City has already started to implement its terms and appears to be moving more people into hotel rooms. Evans Decl., ¶¶6,9-11. Proposed Intervenor’s have received reports that the City is not allowing individuals who are placed in hotels to take more than two bags’ worth of personal property with them, and that they have to leave everything else behind. Evans Decl., ¶¶21-22, 27; Friedenbach Decl., ¶13. Further, evidence indicates individuals must forfeit their tents to the City as a condition of being placed in a hotel room. Evans Decl., ¶¶10-12; Friedenbach Decl., ¶¶9-11, 13. The proposed Stipulated Injunction’s focus on removal of unhoused individuals’ personal property from sidewalks and other public spaces, without provisions to prevent the unlawful seizure and destruction of that property, or to ensure that unsheltered Tenderloin residents are not forced to abandon their belongings in order to accept shelter, significantly increases the risk that the City will violate unsheltered people’s constitutional rights. *See* Evans Decl., ¶¶10,14, 17-18, 21-27 (describing incidents she witnessed on June 13, 15, 16, and 17 where City workers violated their own property confiscation procedures regarding notice and storage requirements, confiscated a wheelchair, confiscated unabandoned tents and property, failed to provide appropriate shelter placements based on people’s disabilities, and failed to provide reasonable accommodations

during property confiscation based on people’s mental health conditions); Friedenbach Decl., ¶9 (describing in one instance on or around June 16, 2020, City workers told unhoused individuals to give up their tents to be placed in hotel rooms, a few people gave up their tents to the City but were not placed in hotel rooms and the City did not return their tents).

During the COVID-19 pandemic, the forced relocation of unsheltered individuals without provision of adequate shelter, and the loss of their tents and other safety gear, significantly increases health risks to displaced individuals, as well as the risk of disease spread within the community. These actions will disproportionately affect homeless people with disabilities, as those who are Black and/or Latinx. Recent Centers for Disease Control and Prevention (CDC) data show an “overrepresentation of blacks among hospitalized patients”, and “death rates among black/African American persons (92.3 deaths per 100,000 population) and Hispanic/Latinx persons (74.3) that were substantially higher than that of white (45.2) or Asian (34.5) persons.”¹ Further, the proposed Stipulated Injunction’s emphasis on enforcement will increase the City’s use of its police force to respond to homelessness and will increase the City’s policing of its unhoused Black and Latinx residents during a time when the City—like other cities throughout the nation—is evaluating potential reforms to the use and funding of its police department in response to the Black Lives Matter movement. Allowing Proposed Intervenor as parties is necessary to address these concerns, and to ensure that the interests of unhoused Tenderloin residents are adequately represented in any resolution of the case.

2. The Stipulated Injunction does not protect the legal interests of persons with disabilities.

The proposed Stipulated Injunction does not include any requirement or process to ensure that shelter placements are appropriate for and accessible to persons with disabilities, nor to provide reasonable accommodations to persons with disabilities in implementing the agreement. A person may decline an offer of shelter for a number of reasons related to having a disability.

¹ *Coronavirus Disease 2019 (COVID-19) Racial & Ethnic Minority Groups* (June 4, 2020), CDC. Available online at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

1 An offer of shelter that is not accessible to the person for reasons related to their disability is in
 2 that instance, at best, illusory. Chrisman Decl., ¶¶11-18; see also Evans Decl., ¶¶14, 17-18 For
 3 example, a person with a physical disability might not be able to lie down at a safe sleeping site
 4 placement if the beds or cots are not physically accessible or are too close together to navigate
 5 with a wheelchair or walker. A person with complicated health needs might not be able to move
 6 to a hotel room or safe sleeping site outside the Tenderloin immediately without a health-
 7 conscious process that ensures uninterrupted care from health providers, located in the
 8 neighborhood. *See* Chrisman Decl., ¶¶10, 16-17, 19. A crowded congregate setting may not be
 9 accessible to a person who has mental health symptoms that are triggered by being in a large,
 10 crowded space, nor to someone who is at high-risk for contracting COVID-19 due to underlying
 11 health conditions. *See* Chrisman Decl., ¶¶10-11, 14-17.

12 The proposed Stipulated Injunction contains no policies or procedures for determining
 13 appropriate placements. Proposed Intervenor understand that these placements are temporary.
 14 But, even temporary placements must be appropriate placements for individuals with disabilities.
 15 Appropriate placement needs to include assessment for medical needs, social needs, and access
 16 to continuation of services. Chrisman Decl., ¶11. Forcing individuals with disabilities to accept
 17 shelter placements that are not accessible or taking enforcement action against someone who
 18 rejects a shelter placement because it does not meet their disability-related needs, would violate
 19 those individuals' rights under the ADA and other civil rights statutes.

20 Proposed Intervenor's have received reports, that in the past few days, the City has not
 21 been able to provide hotels or other accommodations with adequate accessibility and support for
 22 people who use wheelchairs, on several occasions delaying placement for people who use
 23 wheelchairs and passing over those who are unable to transfer from their wheelchair
 24 independently. Evans Decl., ¶18; Friedenbach Decl., ¶6 (describing prior hotel placement was
 25 based on City's list of vulnerable unhoused persons based on health conditions, and that
 26 Stipulated Injunction "has no such list or prioritization"...and in practice is "instead only
 27 offering hotel rooms to unhoused individuals who have tents").
 28

1 These facts, coupled with the plain language of the proposed Stipulated Injunction,
 2 demonstrates that none of the existing parties adequately represents the interests of homeless
 3 Tenderloin residents, who are the people most affected by both litigation and the proposed
 4 Stipulated Injunction. The proposed Stipulated Injunction as it is currently written lacks the
 5 necessary language and procedures to safeguard the rights of unhoused persons with disabilities.
 6 Proposed Intervenorors have experience and expertise in working with unhoused people, as well as
 7 lived experience of homelessness. *See* Wilson Decl., ¶¶8, 11-12. Their inclusion will help
 8 improve the parties' current agreement and ensure that any negotiated settlement reflects the
 9 perspectives and protects the rights of unhoused persons, including unhoused persons with
 10 disabilities.

11 **III. CONCLUSION**

12 Proposed Intervenorors are committed to participating in a solution that will accommodate
 13 all of the people in the Tenderloin. For the foregoing reasons, Proposed Intervenorors respectfully
 14 request that this Court to grant Proposed Intervenorors' Motion to Intervene, so that they may
 15 negotiate a resolution that will protect the constitutional and statutory rights of homeless people
 16 with disabilities.

17
 18 DATED: June 18, 2020

Respectfully submitted,

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25 By: /s/ Lauren Hansen
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